

WISHA Interim Operations Memorandum
Washington Department of Labor and Industries
#97-4-A
DELIVERY OF CITATIONS TO LEGAL EMPLOYERS

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Background

The Citation and Notice of Assessment (C&N) is used to notify employers subject to Title 49.17 RCW (the Washington Industrial Safety and Health Act) of identified safety and health violations, dates by which such violations must be corrected, and the amount of penalty owed to the department (if any). RCW 49.17.120 requires that a copy of the citation be immediately and prominently posted at or near each place a violation referred to in the citation occurred.

It is important that such C&Ns are correctly issued in the legal name of the employing entity and that they be delivered successfully. The IMIS staff recently provided training to the regions on using LINIIS screens to properly identify legal entities and addresses for inspection reports, resulting in noticeable improvement. IMIS is able to provide additional regional training on this subject on a limited basis if requested.

When citations are incorrectly issued or not received by the employer, the ability of L&I to carry out its mission under WISHA is hindered. If an employer receives an incorrectly issued citation and then appeals, the citation may be vacated, wasting the effort of the compliance officer. Even if the employer does not appeal, the department's ability to pursue collection action when penalties remain unpaid can be affected. Finally, citations correctly issued but not received by the employer may be a problem if used as the basis for willful, repeat, or failure to abate violations discovered during later inspections.

To ensure further improvements, several questions require answers:

1. Who is responsible for making sure the correct legal employer name and correct mailing address is on inspection reports?
2. Who is responsible for handling redelivery when citations are returned to the department 'unclaimed,' 'refused,' or 'undeliverable'?
3. What is the time limitation on achieving delivery of the citation?

This interim memorandum provides guidance to WISHA staff in the field and in central office regarding their respective responsibilities, as well as the answers to the above questions.

Policy

1. The regions (supervisor, inspector, data compiler, etc.) are responsible for supplying the legal employer name and correct mailing address on inspection reports when they are submitted to IMIS. For most citations, meeting this obligation will result in prompt and correct delivery of the C&N.

2. Central office is responsible for re-mailing citations only when the information provided by the region has been entered incorrectly by IMIS. When citations are returned as undeliverable for any reason, IMIS will first check the citation against the inspection report to make sure the address is typed correctly. If IMIS erred, IMIS will reissue the citation with new issuance and abatement dates. The reissued citation is mailed to the employer using the same process and procedures currently used.
3. Decisions and further action in relation to all other returned citations are the responsibility of the region. IMIS will immediately notify the region data compiler (or whomever the region designates) about the return. The WISHA supervisor must then decide which of the following actions to take:
 - a. Modify The Citation: The region supervisor may choose to modify the address on the citation according to the procedures in the IMIS Forms Manual, Chapter 7, pages 5 and 6. This will result in a reissued citation which will then be mailed to the employer using the same process and procedures currently used.
 - b. Personally Serve The Employer: The region supervisor may arrange to have the citation personally served or locally delivered (usually for 'unclaimed' or 'refused' citations). In this case, IMIS will immediately send the citation to the region. When delivery is achieved, notarized documentation of the successful delivery must be returned to the collections desk, mail stop 4633.

NOTE: Under no circumstances may agency employees personally serve citations if the employer has previously displayed acts of verbal and/or non-verbal hostility against the agency or any agency employee or if the citations must be delivered to the employer's private residence.
 - c. Administratively Close The Citation: The region may choose to administratively close citations when delivery cannot be achieved, according to the procedures in the IMIS Forms Manual, Chapter 7, page 8.

Whatever the action taken, the region must make its decision and act quickly to avoid unnecessary delays getting the citation to the employer, getting workplace hazards corrected, and getting penalties collected. WISHA P&TS may run periodic management reports to identify potential issues regarding timeliness.

4. A citation that must be reissued and/or redelivered is not governed by the statute requiring that the violation be cited within six months of discovery. This statutory requirement is appropriately applied only to the original *issuance* of the citation to the legal employer, not its *delivery* to the employer.

For example: If a citation cannot be delivered because it has an incorrect address or the employer refuses service, it can be served on the employer even after six months have elapsed since the violation was discovered, whether by mail at a new address or by formal service, if necessary.